Supreme Court, U.S.
FILED
JUL 12 1991
OFFICE OF THE CLERK

No. 90-1390

In the Supreme Court of the United States

OCTOBER TERM, 1991

GENERAL MOTORS CORPORATION, PETITIONER

v.

EVERT ROMEIN, ET AL., RESPONDENTS

FORD MOTOR COMPANY, PETITIONER

v.

ARTURO GONZALEZ, ET AL., RESPONDENTS

On Writ of Certiorari to the Supreme Court of Michigan

JOINT APPENDIX

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* *Counsel of Record*

PETITION FOR WRIT OF CERTIORARI FILED MARCH 5, 1991
CERTIORARI GRANTED MAY 13, 1991

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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* The opinions and judgments of the lower courts were printed in the petition and have not been reproduced here.

SUMMARY OF RELEVANT DOCKET ENTRIES

Romein v. General Motors Corp.

DATE	PROCEEDINGS
Workers' Compensation Appeal Board	
Dec. 22, 1977	Employer's Basic Report of Injury
Jan. 13, 1978	Notice of Commencement of Compensation Payments
Sep. 24, 1979	Plaintiff's Petition for Hearing
Dec. 18, 1980	Decision of Administrative Law Judge La-Porte
Feb. 6, 1981	Appeal Board Order
Nov. 15, 1983	Plaintiff's Petition for Hearing
June 28, 1984	Decision of Administrative Law Judge La-Porte
Jan. 9, 1985	Appeal Board Order
April 4, 1985	Appeal Board Order
April 9, 1986	Decision of Administrative Law Judge La-Porte
May 20, 1987	Decision and Order of the Appeal Board
Michigan Court of Appeals	
June 11, 1987	Application for Leave to Appeal
Sep. 10, 1987	Case consolidated on Appeal with *Gonzalez*
May 16, 1988	Opinion filed
July 7, 1988	Rehearing denied
Michigan Supreme Court	
July 28, 1988	General Motor's Application for Leave to Appeal
April 7, 1989	Order granting Leave to Appeal

DATE	PROCEEDINGS
Sept. 28, 1990	Opinion filed
Dec. 5, 1990	Motion for Rehearing denied
Dec. 27, 1990	Stay ordered

Gonzalez v. Ford Motor Co.

Workers' Compensation Appeal Board

Jan. 8, 1981	Plaintiff's Petition for Hearing
Oct. 21, 1981	Decision of Administrative Law Judge Foster
Oct. 6, 1982	Plaintiff's Petition for Hearing
Oct. 10, 1984	Decision of Administrative Law Judge Foster
May 27, 1987	Decision and Order of Appeal Board

Michigan Court of Appeals

June 23, 1987	Application for Leave to Appeal
Sep. 10, 1987	Case consolidated on Appeal with *Romein*
May 16, 1988	Opinion filed
July 7, 1988	Rehearing denied

Michigan Supreme Court

July 28, 1988	General Motor's Application for Leave to Appeal
April 7, 1989	Order granting Leave to Appeal
Sept. 28, 1990	Opinion filed
Dec. 5, 1990	Motion for Rehearing denied
Dec. 27, 1990	Stay ordered

☐ Initial 101
☐ Supplemental 101
☒ Corrected 101
Explain Rate Change

State of Michigan
DEPARTMENT OF LABOR
Bureau of Workers' Disability Compensation
LANSING, MICHIGAN

Form 101
Rev. 1-80

NOTICE OF COMMENCEMENT OF COMPENSATION PAYMENTS

INS. CO. FILE#

1. Name of employee ROMEIN, Everett SSN 362-46-5198
(Last) (First) (Middle)
2. Address 8090 Circle Dr. City Clarkston
3. Date of Personal Injury 12/5/77 4. Last day worked 12/5/77 5. Date Disability Commenced 12/6/77
6. Nature of Personal Injury Fracture Pelvis, Fracture rt. rib
7. Straight Time Earnings: Hourly rate Hours per week Total $ 370.40
Overtime Earnings: Hourly rate Hours per week Total $
If board, room furnished give value Total $
If on piece work or Commission, explain fully (Combined weekly earnings $ 370.40)

8. Number of dependents 1
9. Compensation rate $42.03 Date wages reduced by other employer-financed benefits as provided for in Section 354 of the Act.
10. Date first payment due Date first payment actually made
11. Name of Employer Pontiac Motor Division Address Pontiac, MI 48053
12. Name of Insurance Company Self-insured Address
13. Date of this report 7/19/82 Signature of designated agent of insurer or self-insured employer.

Form 101
Rev. 7-76

State of Michigan
DEPARTMENT OF LABOR
Bureau of Workers' Disability Compensation
LANSING, MICHIGAN

☒ Initial 101
☐ Supplemental 101
☐ If Corrected 101
Explain

NOTICE OF COMMENCEMENT OF COMPENSATION PAYMENTS

INS. CO. FILE#

1. Name of employee ROMEIN, Evert (Last) (First) (Middle) SSN 362 46 5198
2. Address 8216 Elizabeth Lake Rd. City Union Lake
3. Date of Personal Injury 12/5/77 4. Last day worked 12/5/77 5. Date Disability Commenced 12/6/77
6. Nature of Personal Injury Fractured pelvis, fx. (1) rib
7. Straight Time Earnings: Hourly rate $9.26 Hours per week 40 Total $ 370.40
   Overtime Earnings: Hourly rate Hours per week Total $
   If board, room furnished give value Total $
   Combined weekly earnings $ 370.40
   If on piece work or Commission, explain fully
8. Number of dependents 1
9. Compensation rate $132.00 If partial, explain
10. Date first payment due 12/23/77 Date first payment actually made 12/23/77*
11. Name of Employer Pontiac Motor Division Address Pontiac, Michigan 48053
12. Name of Insurance Company Self-insured Address
13. Date of this report 12/26/77 Signature of designated agent of insurer or self-insured employer Richard L. Daly

*First notice of lost time 12/9/77

PONTIAC

[EMBLEM]

September 28, 1983

Everett Romein
8090 W. Circle Street
Clarkston, Michigan 48016

Dear Mr. Romein:

Public Act 203 of 1981, which became effective March 31, 1982 provides in fact, that Workers' Compensation benefits shall be reduced by other employer-financed and social security benefits. In accordance with this law, your weekly Workers' Compensation benefits should have been reduced to zero ($0.00) on the effective date of the legislation.

Your specific reduction is calculated as follows:

1. Weekly Benefit Entitlement as of 03/30/82 $ 99.00
2. Unreduced weekly W/C rate 132.00
3. 50% of old age SS ($705 X 12 ÷ 52X.50) 81.34
4. Weekly after tax Pension ($53.20 + 3.77) 56.97
5. W/C Payable (#2—#3—#4) -0-

Due to our failure to timely effectuate the aforementioned reduction to your Workers' Compensation Benefits, you have been overpaid $75.03 a week for 52 weeks and 1 day, for a total of $3,913.57.

Commencing in January, 1982, you received a Workers' Compensation supplement payment of $21 per week. These payments continued through July 11, 1982, at which time they were discontinued due to the lack of sufficient funding of the Compensation Supplement Fund.

The Michigan Legislature has now provided sufficient funds which allows employers to reinstate Compensation Supplement payments. However, we will deduct the above overpayment from your future entitlement until the full amount is repaid.

I am sorry for any inconvenience this may have caused you.

If you have any further questions, please feel free to contact me at 857-0654.

Very truly yours,

/s/ Minnie A. Ellsworth
MINNIE A. ELLSWORTH
Workers' Compensation
Supervisor

MAE/pw

cc: file

Rev. 1-83

STATE OF MICHIGAN
DEPARTMENT OF LABOR
BUREAU OF WORKERS' DISABILITY COMPENSATION

INS. CO.
CLAIM #

NOTICE OF COMMENCEMENT OF COMPENSATION PAYMENTS

PART A.

EMPLOYEE ROMEIN, (LAST) Evert (FIRST) (MIDDLE) SOC. SEC. # 362-46-5198

ADDRESS 8090 W. Circle Dr. (STREET OR POST OFFICE BOX) DATE OF INJURY 12 (MONTH) 05 (DAY) 77 (YEAR)

Clarkston (CITY) MI (STATE) 48016 (ZIP CODE) DATE OF BIRTH 06 (MONTH) 02 (DAY) 12 (YEAR)

EMPLOYER Pontiac Motor Division of General Motors Corp. Federal ID # 380572515 066

ADDRESS One Pontiac Plaza, (STREET OR POST OFFICE BOX) Pontiac, (CITY) MI (STATE) 48053 (ZIP CODE)

INSURANCE CARRIER OR SERVICE CO. Self-insured NAIC OR SELF-INSURANCE # 37999000 A23

PART B.

1. Indicate reason for filing: a. ☐ Initial filing c. ☐ Reopened claim e. ☐ Appeal pending - 70% payments
   b. ☐ Initial filing per order d. ☒ Correction or status change f. ☐ Discontinued payments resumed per Sec. 354
2. If correction or status change, indicate the reason(s) for change.
   a. ☐ Age-65 reduction d. ☐ Benefit type f. ☐ Unemployment offset h. ☐ Advance payment j. ☐ Part A error
   b. ☐ Dependency e. ☒ Benefit coordination g. ☐ Reimbursement by fund i. ☐ Payments discontinued per Sec. 354
   c. ☐ Other
3. Benefit type: a. ☐ Death b. ☐ Permanent and Total c. ☐ Specific loss d. ☐ Partial e. ☐ Temporary Total f. ☐ Other
4. If specific loss involves an amputation, attach a diagram designating exact point of amputation signed by attending physician.
5. Last day worked 12 (Month) 05 (Day) 77 (Year) 6. Date disability commenced 12 (Month) 06 (Day) 77 (Year)
7. Nature of injury Fracture Pelvis, Fracture right rib
8. Average weekly wage: $370.40 9. Length of workweek: 6 days
10. Employee's filing status on the date of injury: a. ☐ Single b. ☐ Single head of household c. ☒ Married filing joint d. ☐ Married filing separate
11. Number of dependents: 01 12. Benefit standard: a. ☐ 2/3 average weekly wage b. ☐ 80% after-tax average weekly wage
13. Weekly compensation base rate $ 29.59 (To determine base rate, use # 8, 10, 11 above.)
14. Adjustments to weekly compensation base rate

	Amount		Amount		Amount
a. ☐ Age-65 reduction (—)		d. ☐ Unemployment offset*(—)		f. ☐ Advance payment	(—)
b. ☑ Soc. Sec. Coord.*(—)	8.41	e. ☐ Other benefit coord.* (—)		g. ☐ Double compensation	(+)
c. ☐ Other ( )				h. ☐ Compensation supplement	(+) $21.00

*Part C must be completed (+) (—) Amount to be added or deducted from weekly base rate

15. Adjusted weekly compensation rate: $ 21.00 (To determine adjusted rate, use #13 and 14 above.)
16. Amount of line 15 to be paid by carrier and not reimbursed 0
17. Effective date of rate on line 16 04 (Month) 01 (Day) 83 (Year)
18. If the amount on line 15 does not equal the amount on line 16, indicate the reason(s):
   a. ☐ Compensation Supplement Fund Reimbursement c. ☐ Second Injury Fund Reimbursement e. ☐ Payments Discontinued 50% per Sec. 354 g. ☐ 70% Appeal Payment
   b. ☐ Silicosis and Dust Disease Fund Reimbursement d. ☐ Self-Insurers' Security Fund Reimbursement f. ☐ Payments Discontinued 100% per Sec. 354 h. ☐ Other
19. Date carrier received notice of injury: (Month) (Day) (Year) 20. Date first payment made (Month) (Day) (Year)
21. Date of report: 10 (Month) 19 (Day) 83 (Year)

A COPY OF THIS FORM HAS BEEN SENT TO THE EMPLOYEE

Minnie A. Ellsworth (313) 857-0654
Claims person to whom correspondence should be sent Telephone #

One Pontiac Plaza, Pontiac, MI 48053
Claims office address

Minnie A. Ellsworth
Authorized signature

RECEIVED
LABOR DIVISION
OCT 25
[illegible]

IF ANY OF THE ABOVE INFORMATION IS INCORRECT, PLEASE CONTACT THE INSURANCE CARRIER OR THE BUREAU OF WORKERS' DISABILITY COMPENSATION. ☐

12/5/77

The Michigan Workers' Disability Co. ensation Act provides that employers may reduc air obligation to pay or cause to be paid weekly worker's compensation benefits by coordinating the amounts of other benefits received by the employee for the same time period. The types of other benefits subject to coordination are: social security old-age insurance benefits; benefits under a self-insurance plan, wage continuation plan, disability insurance policy, pension or retirement plan; and unemployment compensation benefits. IT IS IMPORTANT THAT YOU NOTIFY YOUR EMPLOYER OR INSURANCE CARRIER IF THERE IS A CHANGE IN THE BENEFITS YOU RECEIVE UNDER ANY OF THESE PLANS.

PART C. TO BE COMPLETED BY CARRIER - If compensation benefits are being reduced in accordance with Section 354 or 358, please complete the appropriate section below. (Note: Figures should not be rounded to the nearest dollar.)

Section I. Other Benefits

This section must be completed if the employee has received or is receiving benefits under a self-insurance plan, wage continuation plan, disability insurance plan, or pension or retirement plan.

Complete lines a - e on the table below for each applicable benefit plan according to the following instructions.

Line

a. Weekly Benefit Amount - This is the weekly amount of benefits paid to the employee. If benefits are paid monthly, divide the monthly amount by 4.33 and enter on Line (a).

b. 80% After-Tax Amount - To find the 80% after-tax amount, take the amount from Line (a) and find its corresponding after-tax amount based on the employee's filing status and number of dependents using the 80% after-tax tables provided by the bureau.

c. 100% After-Tax Amount - To find the 100% after-tax amount, take the amount from Line (b) and multiply by 1.25.

d. FICA Tax - When a FICA deduction is not taken for a benefit plan, determine the FICA Tax amount by multiplying Line (a) by the FICA tax rate in effect on the July 1 of the year preceding the date of injury. Note: Cases with a 1982 injury date shall use .0665 as the FICA tax rate and cases with a 1983 injury date shall use .067.

e. Percent Employer Contribution - To determine the percent of employer contribution for any self-insurance plan, wage continuation plan or disability insurance plan, divide the premium amount paid by the employer by the total insurance premium. Round to the nearest percent and enter on Line (e). To determine the percent of employer contribution to any pension or retirement plan, divide the employer's total contribution to the plan by the total amount contributed to the plan. Round to the nearest percent and enter on Line (e).

f. Income to be Coordinated - To determine the amount of income to be coordinated, add the amounts from Line (c) and (d) and multiply the sum by Line (e).

	Pension	Wage Continuation	Disability Insurance		Self-Insurance	Other
			First 6 Mos	Over 6 Mos		
1 a Weekly benefit amount	$132.00					
b 80% after-tax amount of (a)	$ 42.56					
	X 1.25	X 1.25	X 1.25	X 1.25	X 1.25	X 1.25
c 100% after-tax amount	$ 53.20					
d FICA tax*	$ 3.77					
e % Employer contribution	100%					
f Income to be coordinated**	$ 56.97					

*Does not apply in all cases. See directions above **Line f = (Lines c + d) x Line e

2. TOTAL AMOUNT OF WEEKLY OTHER BENEFITS TO BE COORDINATED $56.97 (Total of all amounts in line f.)
This figure should appear under #14e on the front of this form.

Section II. Social Security

This section pertains to old-age insurance benefits received by the employee under the Social Security Act. NOTE: Only the employee's monthly gross old-age benefit (before deduction for medicare) may be coordinated.

1. Monthly old-age benefit _____
2. Weekly old-age benefit (above amount ÷ 4.33) _____
3. TOTAL AMOUNT OF SOCIAL SECURITY BENEFITS TO BE COORDINATED (50% of Line 2) _____
This figure should appear under 14b on the front of this form.

Section III. Unemployment Compensation

1. Number of weeks awarded _____
2. Beginning date of unemployment compensation _____ Scheduled expiration date _____
3. TOTAL WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS _____
This figure should appear under 14d on the front of this form.

OLF

Section IV. Remarks

II-5

STATE OF MICHIGAN

[SEAL]

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF LABOR

C. PATRICK BABCOCK, Director

Bureau of Workers' Disability Compensation
309 N. Washington
P.O. Box 30016
Lansing, Michigan 48909

NOTICE OF DISPUTE
FILED BY INSURANCE CO. OR
SELF INSURED EMPLOYER

Soc. Sec. No. 362-46-5198

1. Name of Injured Employee Romein Evert
   Last First M.I.
2. Address of Injured Employee 8090 W. Circle Street, Clarkston, MI 48016
3. Name of Employer CPC Pontiac Operations of GM Corporation
4. Name of Insurance Company (Not Agent) self-insured
5. Date of Injury 12/05/77
6. Place Alleges Pontiac Motor Div.
7. Reason for Dispute (by Insurance Co. or Self Insured Employer) Workers Disability Compensation weekly benefit payments, paid on and after March 31, 1982, are being reduced as provided in

Section 418.354. It is specifically intended that this dispute is a continuing dispute applicable to each and every reduction in workers disability compensation weekly benefit payments made including the recoupment of any overpayment because of the receipt of other benefits as provided for in Section 418.354 for the same week and for the same number of weeks during which both workers disability compensation and the other benefit payments were made and would have been made in the future except for the provisions of Section 418.354.

The insurance company or self insured employer reserve the right to dispute the claim for other reasons should an application for Hearing and Adjustment of Claim be filed.

8. Do you believe the dispute can be resolved by conference without a formal hearing?

Yes or No

Signed by /s/ Minnie A. Ellsworth
(Name-title)

CPC-Pontiac
(Name of insurance company or self-insured employer)

Date March 14, 1986

Claim or file number

One Pontiac Plaza

Pontiac, Michigan

48058-3484
Address

Telephone

NOTE: This form is submitted by the insurance carrier or self-insured employer to the Bureau of Workers' Disability Compensation.

Forward in duplicate to the Bureau on or before the 14th day after employer has notice or knowledge of the alleged injury or death in all cases where the right of the injured or dependent to compensation is disputed. Mail one copy of form 107 to the injured employee.

STATE OF MICHIGAN

BUREAU OF WORKERS' DISABILITY COMPENSATION

VOLUNTARY PAYMENT FORM

In the case of ARTURO GONZALES vs FORD MOTOR COMPANY the plaintiff and defendant agree that an order may be entered dismissing the plaintiff's petition for hearing. The defendants agree to pay benefits on a voluntary basis in accordance with the following:

(A) Weekly benefit rate $176.00 for the period beginning 1/1/81 to present and continuing

(B) Medical expenses to be paid Yes —— No ✓
If yes, to whom ————————

(C) Reimbursement to group carrier Yes ——
No ✓ If yes, to whom ————————

(D) Additional agreements No Interest. The Silicosis and Dust Disease Fund has agreed to reimburse Defendant, Ford Motor Co., pursuant to the statute, for all weekly benefits paid in excess of $12,500

NEITHER THE PAYMENT OF COMPENSATION OR THE ACCEPTING OF THE SAME BY THE EMPLOYEE OR HIS DEPENDENTS SHALL BE CONSIDERED AS A DETERMINATION OF THE RIGHTS OF THE PARTIES UNDER THIS ACT.

ALL BENEFITS BECOME DUE AND PAYABLE ON THE DATE OF THIS AGREEMENT.

SIGNED BY /s/ James M. O'Reilly
Plaintiff Attorney

DATE COMPLETED 9/24/81

/s/ Alan S. Gorosh
Defendant
FORD MOTOR COMPANY

/s/ Andrew W. Foster
Administrative Law Judge

LANSING, MICHIGAN 48909

DECISION

Arturo Gonzalez Employee	Ford Motor Company Employer-Insurer(s)
365-36-5761 Soc. Security #	vs.

A hearing having been held September 29, 1981 at Detroit, Michigan on petition of (plaintiff) (defendant), I find as follows:

That the above named employee (did) (did not) receive a personal injury arising out of and in the course of (his) (her) employment by the above named employer on 12-23-80.

IT IS FURTHER ORDERED that pursuant to the voluntary pay agreement executed by the parties on September 24, 1981, plaintiff's petition for hearing is hereby dismissed.

/s/ Andrew W. Foster
ANDREW W. FOSTER
Administrative Law Judge

Signed this 29th day of September A.D. 1981.

This award (is) (is not) stipulated by the parties.

Further compensation (will) (will not) be paid voluntarily.

UNLESS A CLAIM FOR REVIEW IS FILED BY EITHER PARTY WITHIN FIFTEEN DAYS FROM THE DATE STAMPED HEREON AS *"MAILING DATE"*, THIS DECISION SHALL STAND AS THE FINAL DECISION OF THE BUREAU OF WORKERS' DISABILITY COMPENSATION.

State of Michigan
DEPARTMENT OF LABOR
Bureau of Workers' Disability Compensation
LANSING, MICHIGAN

☒ Initial 101 ☐ Supplemental 101 ☐ If Corrected 101
Explain

NOTICE OF COMMENCEMENT OF COMPENSATION PAYMENTS

INS. CO. FILE# [illegible]

1. Name of employee GONZALEZ Arturo (Last) (First) (Middle) SSN 365-36-5761
2. Address 1741 Combes City San Benito, Texas 7858
3. Date of Personal Injury 12-23-80 4. Last day worked 12-31-80 5. Date Disability Commenced 1-1-81
6. Nature of Personal Injury Lung Condition
7. Straight Time Earnings: Hourly rate 9.545 Hours per week 40 Total $ 381.80
COLA Earnings: Hourly rate 1.15 Hours per week 40 Total $ 46.00
If board, room furnished give value Total $
Combined weekly earnings $ 427.80

If on piece work or Commission, explain fully

8. Number of dependents 1
9. Compensation rate $176.00 If partial, explain PER VOLUNTARY PAY AGREEMENT DATED 9-24-81
10. Date first payment due Ford Motor Co. 38-0549190 Date first payment actually made
11. Name of Employer Mich. Casting Center #1217 Address 22000 Gibraltar, Flat Rock, Mi. 48134
12. Name of Insurance Company Self-Insured Address
13. Date of this report 10-8-81 Signature of designated agent of insurer or insured employer.
R. A. DeShetler, Workers' Compensation Mgr.

Form 101
Rev. 1-80

65

Form 101
R

State of Michigan
DEPARTMENT OF LABOR
Bureau of Workers' Disability Compensation
LANSING, MICHIGAN

☐ Initial 101
☒ Supplemental 101
☐ Corrected 101
Explain Coord. w/ Co. Pension Benefit

NOTICE OF COMMENCEMENT OF COMPENSATION PAYMENTS

ON HS GONZALEZ

1. Name of employee Gonzales (Last) ARTURO (First) (Middle) INS. CO. FILE# 80-0094
2. Address 1714 COMBS SSN 365-36-[illegible]576
3. Date of Personal Injury 12-23-80 Last day worked City SAN Benito, Tex 785
6. Nature of Personal Injury 5. Date Disability Commenced 1-1-81
7. Straight Time Earnings: Hourly rate Hours per week Total $
   Overtime Earnings: Hourly rate Hours per week Total $
   If board, room furnished give value Total $
   Combined weekly earnings $ 127.80
   If on piece work or Commission, explain fully
8. Number of dependents 0
9. Compensation rate 0 If partial, explain See 101 B
10. Date first payment due Ford Motor Co - 38-0549190 Date first payment actually made
11. Name of Employer MCC Fizir Address 3001 Miller Rd, Dearborn, M. 48121
12. Name of Insurance Company OWN RISK Address SAME
13. Date of this report 7-28-82 Signature of designated agent of insurer or self-insured employer RA Desketter

Base rate coordinated with Company Pension benefit Plan Effective 4-1-82

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Form 101-b

DEPARTMENT OF LABOR
BUREAU OF WORKERS' DISABILITY COMPENSATION

☒ Initial
☐ Corrected

COORDINATION OF BENEFITS WORKSHEET 12-23-80

Soc. Sec. # 365-36-5761 Ins. Co. File # 80-0094

Employee Name Gonzales, Arturo Z
Last First Middle Initial

Birthdate: Mo. 07 Day 06 Yr. 22

Address 1741 Combs, San Benito, Texas 78586

Filing Status: ☒ Single ☐ Married

Employer Ford Motor Co. - Michigan Casting Ctr.

No. of Dependents 0

-see instructions on back-

Section A. Workers' Compensation Benefits

1. Contined weekly earnings from Line 7 of Form 101 $ 427.80
2. Enter the workers' compensation weekly benefit rate on Line 1. 1. 171.00

Section B. Private Benefits

1. If the employee has received or is receiving benefits under a self-insurance plan, wage continuation plan, disability insurance plan, or pension or retirement plan, please complete this section. If a benefit plan does not fall into one of these categories, use the "other" category and explain on the back of this sheet under remarks.

	Pension	Wage Continuation	Disability Insurance First 6 Mos.	Disability Insurance Over 6 Mos.	Self-Insurance	Other
a. Weekly benefit amount	208.85					
b. 80% after-tax amount of (a)	128.55					
	x 1.25	x 1.25	x 1.25	x 1.25	x 1.25	x 1.25
c. 100% after-tax amount	160.69					
d. FICA tax*	13.89	N/A	N/A			
e. % Employer contribution	—					
f. Income to be coordinated**	174.58					

*Does not apply in all cases. See directions on back. **Line f = (Lines c + d) x Line e

2. Find the total sum of all amounts in Line f and enter on Line 2. This is the total amount of private benefits to be coordinated. If none, enter "0" (zero). 2. 174.58

Section C. Social Security Old-Age Insurance Benefits

1. Monthly old-age benefit _____
2. Weekly old-age benefit rate (above amount x 12 ÷ 52) _____
3. Enter 50% of the weekly old-age benefit rate on Line 3. This is the amount of old-age insurance benefits to be coordinated. If none, enter "0" (zero). —

RECEIVED
DEPT. OF LABOR
DIVISION, INDUS.
JUL 29 '82

Section D. Unemployment Compensation Benefits

1. Number of weeks awarded _____
2. Beginning date _____
3. Scheduled Expiration Date _____
4. Enter the total amount of weekly unemployment compensation benefits on Line 4. This is the amount of unemployment compensation benefits to be coordinated. If none, enter "0" (zero). 4. _____

Section E. Coordination of Benefits

1. Total the amounts from Lines 2, 3, and 4. Enter this amount on Line 5. This is the total amount of benefits to be coordinated. 5. 174.58
2. If Line 1 is greater than Line 5, enter the difference on Line 6. THIS IS THE TOTAL AMOUNT OF COORDINATED WORKERS' COMPENSATION BENEFITS TO BE PAID WEEKLY.

   If Line 1 is less than or equal to Line 5, enter "0" (zero) on Line 6. There are no workers' compensation benefits due after coordination.
3. Enter the amount from Line 6 to Form 101, Line 9. 6. 0

A COPY OF THIS FORM HAS BEEN MAILED TO THE EMPLOYEE

R A DeShetler
Signature of authorized representative (in ink)

7-28-82
Report date

R A DeShetler
Name of person to whom correspondence should be sent

Ford Motor Co.
Name of carrier or self-insured employer Room 1950

PO Box 1600 3001 Miller Rd Dbn, 48121
Address

WC. Adm 323-5845
Title Telephone #

70

17

STATE OF MICHIGAN

[SEAL]

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF LABOR

C. PATRICK BABCOCK, Director

Bureau of Workers' Disability Compensation
309 N. Washington
P.O. Box 30016
Lansing, Michigan 48909

NOTICE OF DISPUTE FILED BY INSURANCE CO. OR SELF INSURED EMPLOYER

Soc. Sec. No. 365-36-5761

1. Name of Injured Employee Gonzales, Arturo
2. Address of Injured Employee 1741 Combs, San Benito, Tex 78586
3. Name of Employer Ford Motor Co—Michigan Casting Cntr 38-0549190
4. Name of Insurance Company (Not Agent) Own Risk 374F1217
5. Date of Injury 12-23-80
6. Place Work
7. Reason for Dispute (by Insurance Co. or Self Insured Employer) Workers' Disability Compensation weekly benefits payments, paid after March

31, 1982, are being reduced as provided in Section 418.354, effective March 31, 1982. It is specifically intended that this dispute is a continuing dispute applicable to each and every reduction in workers' disability compensation weekly benefit payments made including the recoupment of any overpayment because of the receipt of non-coordinated weekly benefits for the same week and for the same number of weeks during which both workers' disability compensation and the non-coordinated weekly benefit payments were made and would have been made in the future except for the provisions of Section 418.354.

The insurance company or self insured employer reserve the right to dispute the claim for other reasons should an application for Hearing and Adjustment of Claim be filed.

8. Do you believe the dispute can be resolved by conference without a formal hearing? NO

Yes or No

Signed by /s/ RA DeShetler, W-C Adm
(Name-title)

Ford Motor Co
(Name of insurance company or self-insured employer)

R.1050
P.O. Box 1600
3001 Miller Rd.
Dearborn, Mi 48121
Address

Date 7-28-82

Claim or file number 80-094

Telephone 323-5845

NOTE: This form is submitted by the insurance carrier or self-insured employer to the Bureau of Workers' Disability Compensation.

Forward in duplicate to the Bureau on or before the 14th day after employer has notice or knowledge of the alleged injury or death in all cases where the right of the injured or dependent to compensation is disputed. Mail one copy of form 107 to the injured employee.

STATE OF MICHIGAN

BUREAU OF WORKERS' COMPENSATION

HONORABLE ANDREW FOSTER
Administrative Law Judge

ARTURO GONZALES, PLAINTIFF

-vs-

FORD MOTOR COMPANY, DEFENDANTS

STIPULATED STATEMENT OF FACTS

Petitioner, ARTURO GONZALES, was employed by the Ford Motor Company from June 9, 1953, until December 31, 1980. Upon retirement from Defendant Company he filed a Workers' Compensation Claim, alleging, among other things, that he developed a disabling lung condition as a consequence of his foundry exposure for the previous twenty years.

Physical examinations performed during the pendency of his claim proved conclusively that he suffered from silicosis in both lungs. Submission of these medical reports to the Silicosis and Dust Disease Fund resulted in an agreement that they would reimburse Defendant Company for all weekly benefits paid in excess of Twelve Thousand Five Hundred ($12,500.00) Dollars.

A Voluntary Payment Form was submitted to the Bureau on September 24, 1981, signed by the counsel for both parties, stating that weekly benefits of

$176.00 were to be paid to Petitioner from January 1, 1981, on a continuing basis and further stating that the Silicosis and Dust Disease Fund had agreed to reimburse Ford Motor Company for all weekly benefits paid in excess of $12,500.00, pursuant to the statute.

In a letter dated August 9, 1982, Petitioner was informed that, effective March 31, 1982, weekly benefits were being reduced as provided by Section 418.354 of the Act. This reduced his weekly benefit rate from $176. to $0.00.

OPN. #108

STATE OF MICHIGAN

WORKERS' COMPENSATION APPEAL BOARD

ARTURO GONZALEZ, SS #365-36-5761, PLAINTIFF

vs.

FORD MOTOR COMPANY, DEFENDANT

Appeal from Administrative Law Judge Foster

JAMES M. O'REILLY FOR THE PLAINTIFF, MARTIN L. CRITCHELL & ALAN S. GOROSH FOR THE DEFENDANT.

OPINION ON REVIEW

GOOLSBY, MEMBER OF THE APPEAL BOARD

Defendant appeals from the decision, mailed October 10, 1984, of Administrative Law Judge Andrew Foster that "defendant improperly coordinated and reduced benefits due and owing plaintiff."

The administrative law judge further found that "MCLA 418.354 does not apply retrospectively to plaintiff's claim since plaintiff's claim since plaintiff's injuries of January 1, 1981 were prior to the effective date of the Act." The administrative law judge also assessed a $1,500 penalty against defendant for its failure to pay full weekly benefits for all violations which occurred prior to filing Notice of Dispute, July 29, 1982. We reverse.

At the time this dispute arose, plaintiff was being paid weekly compensation at the rate of $176.00 pursuant to a voluntary agreement of the parties, dated September 24, 1981.

The dispute was submitted to the administrative law judge on a stipulated set of facts:

> "Petitioner, ARTURO GONZALES, was employed by the Ford Motor Company from June 9, 1953, until December 31, 1980. Upon retirement from Defendant Company he filed a Workers' Compensation Claim, alleging, among other things, that he developed a disabling lung condition as a consequence of his foundry exposure for the previous twenty years.
>
> Physical examinations performed during the pendency of his claim proved conclusively that he suffered from silicosis in both lungs. Submission of these medical reports to the Silicosis and Dust Disease Fund resulted in an agreement that they would reimburse Defendant Company for all weekly benefits paid in excess of Twelve Thousand Five Hundred ($12,500.00) Dollars.
>
> A Voluntary Payment Form was submitted to the Bureau on September 24, 1981, signed by the counsel for both parties, stating that weekly benefits of $176.00 were to be paid to Petitioner from January 1, 1981, on a continuing basis and further stating that the Silicosis and Dust Disease Fund had agreed to reimburse Ford Motor Company for all weekly benefits paid in excess of $12,500.00, pursuant to the statute.
>
> In a letter dated August 9, 1982, Petitioner was informed that, effective March 31, 1982, weekly benefits were being reduced as provided by Sec-

tion 418.354 of the Act. This reduced his weekly benefit rate from $176. to $0."

Both counsel apparently submitted briefs on the matter to the administrative law judge although the file only contains that of plaintiff.

In *Chambers* v *General Motors Corp*, 422 Mich 636 (1985), the Supreme Court determined that MCL 418.354 is procedural, and applies retroactively, regardless of the date of injury. Thus, the holding in *Chambers* negates the basis of the decision of the administrative law judge in this case.

Pursuant to the *Chambers* holding, defendant was within its right to coordinate plaintiff's pension benefit effective March 31, 1982, the date that Section 354 became effective. The fact that defendant was entitled to reimbursement from the Silicosis and Dust Disease Fund for all weekly benefits paid in excess of $12,500, did not affect defendant's right to apply the provisions of Section 354.

We further find that the assessment of a penalty in this case was improper. Pursuant to Section 801 (2), penalties are assessable only when compensation is due and payable and there is no ongoing dispute between the parties. The *Chambers* court rejected the requirement that an employer must file a petition before coordinating benefits under Section 354:

> "Section 354 contains no provision requiring the employer to file a petition and present proofs at an evidentiary hearing prior to coordinating an employee's benefits. The express language of subsection (10) makes it clear that what is required of the employer is that it report the credit or reduction in benefits and provide proof of the basis for it if requested by the bureau." At 661.

The file contains such a report, Form 101-b.

The *Chambers* court determined that such a procedure does not deny due process, because if insufficient evidence is presented or the director is not satisfied that the Act is not being complied with, he or she may convene a Rule 5 hearing. If the claimant is not satisfied with the director's actions, he or she may file for a hearing pursuant to MCL 418.847; MSA 17.237(847); AC, R 408.34. *Chambers, supra*, at 661-662.

Although we have concluded that the administrative law judge was wrong in his decision, we note that the Legislature has recently enacted 1987 PA 28, with immediate effect, which unequivocally reverses the ruling, in *Chambers, supra*. The following language has been added to Section 354:

> "(17) The decision of the Michigan Supreme Court in *Franks* v *White Pine Copper Division*, 422 Mich 636 (1985) is declared to have been erroneously rendered insofar as it interprets this section, it having been and being the legislative intention not to coordinate payments under this section resulting from liability pursuant to section 351, 361 or 835 for personal injuries occurring before March 31, 1982. It is the purpose of this amendatory act to so affirm. This remedial and curative amendment shall be liberally construed to effectuate this purpose."

Accordingly, the administrative law judge is reversed, but defendant must now comply with the dictates of 1987 PA 28.

Because of this recent amendment, we see no reason to address defendant's reimbursement issue, as it is now moot.

Member Smith concurs.

Dated and entered at Lansing, Michigan, this 27th day of May, A.D. 1987;

WORKERS' COMPENSATION APPEAL BOARD

GARRY GOOLSBY

SHARON L. SMITH Members

Letter to the Editor of The Detroit Free Press, P. 8A, Oct. 19, 1985

Workers' comp ruling
benefits only employers

THIS IS regarding your editorial of Oct. 14, concerning the recent state Supreme Court decision commonly referred to as Chambers vs. General Motors Corp. *(Editor's note: The Supreme Court in that case ruled that co-ordination of workers' comp with other benefits did apply to work-related injuries or illnesses incurred before 1982, the year the Legislature reformed the workers' comp law.)*

I can understand the eagerness with which many, including yourselves, have embraced this decision as a positive step toward reform of Michigan's workers' disability compensation system. I must, however, raise a voice in dissent. Simply putting dollars back in the pockets of employers is not meaningful reform in any real sense.

As director of the Bureau of Workers' Disability at the time, I was personally involved in the long and often intense negotiations on these and other reform measures. I can assure you it was never the intent of the Milliken administration or, for that matter, the Legislature to have the co-ordination-of-benefits provisions apply to those with an injury date prior to the effective date of the amendments.

Co-ordination of benefits was primarily intended to address the retiree issue and balance or reduce future costs that would result from the increased maximum benefit level. Administration officials, including myself, along with representatives of the insurance industry and employers, many of whom are extremely

knowledgeable and competent attorneys, on numerous occasions assured the legislative committees that the Supreme Court could never do what it did in the Chambers case.

One of the primary goals of those negotiating reform was to find a way to increase, not decrease, benefits to those who were receiving inadequate benefits based on old injury dates. The compensation supplement fund was created to provide additional benefits for most, if not all, of the very people who now will see their benefits reduced as a result of the court's decision. It is interesting to note the compensation supplement was to be paid from state general funds because it was felt unfair, if not a deprivation of due process rights, to assess employers retroactively.

In this unfortunate but unanimous opinion, the court in essence gave the Legislature what can be argued is complete freedom to adjust benefit levels at its discretion. This poses tremendous implications for the insurance industry and may threaten the historical role of the employer in the program itself. One of the substantive aspects of workers' compensation has always been the certainty of benefits and the ability to forecast costs for insurance purposes. This may no longer be true if this decision is an indication of what the Legislature can do in the future.

Other provisions of the compensation law may very well mitigate the detrimental impact of Chambers on individuals, but the bottom line is that employers will reap the windfall benefit from this decision.

It now behooves this administration and the Legislature to examine the social implications and the detrimental impact on the unintended vicitms of a legislative oversight, and, to the extent possible, rec-

tify what I feel is a shameful injustice. That these individuals receive adequate compensation to maintain a decent standard of living is not, to use your words, an abuse or misuse of the workers' compensation system.

JAMES M. BRAKORA
East Lansing

WILLIAM G. MILLIKEN

October 25, 1985

Mr. Theodore Sachs, Esq.
Sachs, Nunn, Kates, Kadushin,
O'Hare, Helveston & Waldman
1000 Farmer Street
Detroit, MI 48226

Dear Mr. Sachs:

You have asked me to confirm that it was not my intent in sponsoring the 1980 and 1981 workers' compensation legislation for coordination of benefits to have such coordination apply to persons previously injured. You have brought to my attention the recent decision of the Michigan Supreme Court in *Chambers* v *General Motors Corporation*, where the Court holds to the contrary and in part cites remarks by me to the Ann Arbor Chamber of Commerce on November 18, 1981, in which I favored legislative action to coordinate benefits. You have also forwarded to me the recent letter by James M. Brakora to the Detroit Free Press published October 19, 1985, in which Mr. Brakora states that the Court has misconstrued the intent of my administration and of the legislature to have the coordination of benefits provisions apply only to those with injuries subsequent to the effective date of the amendments.

I am pleased to confirm that the intent of the legislation was, contrary to the Court's opinion, as Mr. Brakora has stated it.

It was our purpose, as my remarks quoted in the opinion indicated, to apply the concept of coordination of benefits but only to those persons who would under the new legislation be receiving improved benefit rates

against which any set-offs of other benefits might occur. It was not our intent that the coordination apply in any way to persons who had suffered their injuries prior to the effective date of the amendments.

You are authorized to attach this letter to and to cite it in your proposed Motion for Rehearing in the *Chambers* case.

Very truly yours,

/s/ William G. Milliken
WILLIAM G. MILLIKEN

THEODORE J. ST. ANTOINE
UNIVERSITY OF MICHIGAN LAW SCHOOL
Ann Arbor, Michigan 48109-1215
(313) 764-9348

October 24, 1985

Theodore Sachs, Esq.
Sachs, Nunn, Kates, Kaduskin,
O'Hare, Helveston & Waldman
1000 Farmer
Detroit, MI 48226

Re: Chambers v. General Motors Corp.

Dear Mr. Sachs:

I have read the October 7, 1985 Opinion of the Michigan Supreme Court in the above-entitled case, with special attention to part II-B-3, headed, "The Public Policy Underlying the Coordination of Benefits Provisions." There the Court, on pages 12-13 of its Slip Opinion, quotes from my Report as the Governor's Special Counselor on Workers' Compensation, dated December 12, 1984, entitled *Workers' Compensation in Michigan: Costs, Benefits and Fairness.* The Court aptly characterizes me as endorsing the concept of coordination of benefits, and I of course have no objection to being quoted to that effect.

Unfortunately, in the opening sentence of this portion of its Opinion, the Court declares: "Analysis of the legislative history of the coordination of benefits provisions provides further support for our conclusion [that sections 354 and 358 of the Workers' Compensation Act authorize coordination as to workers whose injuries occurred prior to the effective dates of the amendments]." This could result in the totally

misleading inference that my Report had something to say, one way or another, on this particular issue.

I never intended to address, and do not believe I even inadvertently addressed, the issue of the injury periods to which sections 354 and 358 would be applicable. The matter was already in litigation when I began preparing my Report. I deliberately avoided dealing with it because I felt I should concentrate on the longer-term policy issues that would have to be addressed by the Legislature in the future.

Sincerely,

/s/ Theodore J. St. Antoine
THEODORE J. ST. ANTOINE
Professor of Law

VERSIONS OF BILL LEADING UP TO
1987 PA 28, § 354

S-3

REPRINT

SUBSTITUTE FOR
SENATE BILL NO. 67

(As Passed the Senate March 25, 1987)

A bill to amend sections 131, 151, 222, 301, 319, 345, 352, 354, 358, 371, 401, 431, 611, 815, and 831 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," sections 151, 319, 345, and 354 as amended by Act No. 103 of the Public Acts of 1985, section 222 as added by Act No. 103 of the Public Acts of 1985, section 301 as amended by Act No. 313 of the Public Acts of 1986, section 352 as amended by Act No. 46 of the Public Acts of 1984, section 358 as added by Act No. 357 of the Public Acts of 1980, sections 371 and 611 as amended by Act No. 32 of the Public Acts of 1982, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418.131, 418.151, 418.222, 418.301, 418.319, 418.345, 418.352, 418.354, 418.358, 418.371, 418.401, 418.431, 418.611, 418.815, and 418.831 of the Michigan Compiled Laws; to add sections 102, 120, 133 subsection only at the time a worker's compensation insurance policy is entered into or renewed.

(16) This section shall not apply to payments made to an employee as a result of liability pursuant to section 361(2) and (3) for the specific loss period set forth therein. It is the intent of the legislature that, because benefits under section 361(2) and (3)

are benefits which recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits.

(17) THIS SECTION APPLIES TO PAYMENTS RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR PERSONAL INJURIES OCCURRING BEFORE, ON, OR AFTER MARCH 31, 1982. EXCEPT FOR PAYMENTS MADE PURSUANT TO AN ORDER OF A HEARING REFEREE OR THE APPEAL BOARD OR PURSUANT TO COURT ORDER, ANY PAYMENTS MADE TO AN EMPLOYEE BEFORE OCTOBER 7, 1985 RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT WERE NOT COORDINATED PURSUANT TO THIS SECTION SHALL NOT BE CONSIDERED TO HAVE CREATED AN OVERPAYMENT OF COMPENSATION BENEFITS SUBJECT TO REIMBURSEMENT TO THE EMPLOYER OR CARRIER AFTER MAY 15, 1987. AN EMPLOYER OR CARRIER THAT RECEIVED REIMBURSEMENT BEFORE MAY 15, 1987 SHALL NOT BE AFFECTED BY THE PROVISIONS OF THIS SUBSECTION.

(18) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE REQUIREMENT OF THIS SECTION TO COORDINATE BENEFITS PAYABLE AFTER MAY 15, 1987, ARISING FROM A PERSONAL INJURY OF AN EMPLOYEE OCCURRING BEFORE MARCH 31, 1982 SHALL NOT REDUCE THE EMPLOYEE'S TOTAL INCOME AFTER THE DATE OF INJURY BELOW 100% OF THE EMPLOYEE'S AFTER TAX WEEKLY WAGE BEFORE THE DATE OF INJURY.

(19) If any portion of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder hereof.

Sec. 358. (1) Net weekly benefits payable under section 351, 361, or lump sum benefits under section 835, shall be reduced by 100% of the AFTER-TAX amount of benefits paid or payable to the injured employee under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws, for identical periods of time and chargeable to the same employer.

(2) AS USED IN SUBSECTION (1), "AFTER-TAX AMOUNT" MEANS THE GROSS AMOUNT OF THE BENEFIT PAID OR PAYABLE UNDER ACT NO. 1 OF THE PUBLIC ACTS OF THE EXTRA SESSION OF 1936, REDUCED BY THE PRORATED WEEKLY AMOUNT WHICH WOULD HAVE BEEN PAID, IF ANY, UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT, 26 U.S.C. 3101 TO 3126, STATE INCOME TAX AND FEDERAL INCOME TAX, CALCULATED ON AN ANNUAL BASIS USING AS THE NUMBER OF EXEMPTIONS THE DISABLED EMPLOYEE'S DEPENDENTS PLUS THE EMPLOYEE, AND WITHOUT EXCESS ITEMIZED DEDUCTIONS.

HOUSE SUBSTITUTE FOR SENATE BILL NO. 67

A bill to amend sections 131, 301, 354, and 401 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," section 301 as amended by Act No. 313 of the Public Acts of 1986, section 354 as amended by Act No. 103 of the Public Acts of 1985, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418.131, 418.301, 418.354, and 418.401 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 131, 301, 354, and 401 of Act No. 317 of the Public Acts of 1969, section 301 as amended by Act No. 313 of the Public Acts of 1986, section 354 as amended by Act No. 103 of the Public Acts of 1985, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418.131.

(14) This section does not apply to any payments received or to be received under a disability pension plan provided by the same employer which plan is in existence on March 31, 1982. Any disability pension plan entered into or renewed after March 31, 1982 may provide that the payments under that disability pension plan provided by the employer shall not be coordinated pursuant to this section.

(15) With respect to volunteer fire fighters, volunteer safety patrol officers, volunteer civil defense workers, and volunteer ambulance drivers and attendants who are considered employees for purposes of this act pursuant to section 161(1)(a), the reduction of weekly benefits provided for disability insurance

payments under subsection (1)(b) and (c) and subsection (11) may be waived by the employer. An employer that is not a self-insurer may make the waiver provided for under this subsection only at the time a worker's compensation insurance policy is entered into or renewed.

(16) This section shall not apply to payments made to an employee as a result of liability pursuant to section 361(2) and (3) for the specific loss period set forth therein. It is the intent of the legislature that, because benefits under section 361(2) and (3) are benefits which recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits.

(17) THIS SECTION APPLIES ONLY TO PAYMENTS RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR PERSONAL INJURIES OCCURRING ON OR AFTER MARCH 31, 1982. ANY PAYMENTS MADE TO AN EMPLOYEE RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT HAVE NOT BEEN COORDINATED UNDER THIS SECTION AS OF THE EFFECTIVE DATE OF THIS SUBSECTION SHALL NOT BE COORDINATED, SHALL NOT BE CONSIDERED TO HAVE CREATED AN OVERPAYMENT OF COMPENSATION BENEFITS, AND SHALL NOT BE SUBJECT TO REIMBURSEMENT TO THE EMPLOYER OR CARRIER.

(18) NOTWITHSTANDING ANY OTHER SECTION OF THIS ACT, ANY PAYMENTS MADE TO AN EMPLOYEE RESULTING FROM LIA-

BILITY PURSUANT TO SECTION 351, 361, OR 835 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT HAVE BEEN COORDINATED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION SHALL BE CONSIDERED TO BE AN UNDERPAYMENT OF COMPENSATION BENEFITS, AND THE AMOUNTS WITHHELD PURSUANT TO COORDINATION SHALL BE REIMBURSED WITH INTEREST, WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION, TO THE EMPLOYEE BY THE EMPLOYER OR CARRIER.

(19) NOTWITHSTANDING ANY OTHER SECTION OF THIS ACT, ANY EMPLOYEE WHO HAS PAID AN EMPLOYER OR CARRIER MONEY ALLEGED BY THE EMPLOYER OR CARRIER TO BE OWED THE EMPLOYER OR CARRIER BECAUSE THAT EMPLOYEE'S BENEFITS HAD NOT BEEN COORDINATED UNDER THIS SECTION AND WHOSE DATE OF PERSONAL INJURY WAS BEFORE MARCH 31, 1982 SHALL BE REIMBURSED WITH INTEREST, WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION, THAT MONEY BY THE EMPLOYER OR CARRIER.

* * * *

SENATE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
SENATE BILL NO. 67

A bill to amend sections 131, 301, 354, 401, 431, and 831 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," section 301 as amended by Act No. 313 of the Public Acts of 1986, section 354 as amended by Act No. 103 of the Public Acts of 1985, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418.131, 418.301, 418.354, 418.401, 418.431, and 418.831 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 131, 301, 354, 401, 431, and 831 of Act No. 317 of the Public Acts of 1969, section 301 as amended by Act No. 313 of the Public Acts of 1986, section 354 as amended by Act No. 103 of the Public Acts of 1985, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418, 131, substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits.

(17) THIS SECTION APPLIES ONLY TO PAYMENTS RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR PERSONAL INJURIES OCCURRING ON OR AFTER MARCH 31, 1982. ANY PAYMENTS MADE TO AN EMPLOYEE RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT HAVE NOT BEEN CO-

ORDINATED UNDER THIS SECTION AS OF THE EFFECTIVE DATE OF THIS SUBSECTION SHALL NOT BE COORDINATED, SHALL NOT BE CONSIDERED TO HAVE CREATED AN OVERPAYMENT OF COMPENSATION BENEFITS, AND SHALL NOT BE SUBJECT TO REIMBURSEMENT TO THE EMPLOYER OR CARRIER.

(18) NOTWITHSTANDING ANY OTHER SECTION OF THIS ACT, ANY PAYMENTS MADE TO AN EMPLOYEE RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT HAVE BEEN COORDINATED BEFORE MAY 15, 1987 SHALL NOT BE CONSIDERED TO BE AN UNDERPAYMENT OF COMPENSATION BENEFITS, AND THE AMOUNTS WITHHELD PURSUANT TO COORDINATION SHALL NOT BE REIMBURSED TO THE EMPLOYEE BY THE EMPLOYER OR CARRIER.

(19) If any portion of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of THIS SECTION.

Sec. 401. (1) As used in this chapter, "disability" means a limitation of an employee's wage earning capacity in WORK SUITABLE TO HIS OR HER QUALIFICATIONS AND TRAINING resulting from a personal injury.

HOUSE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
SENATE BILL NO. 67

A bill to amend sections 131, 301, 354, and 401 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," section 301 as amended by Act No. 313 of the Public Acts of 1986, section 354 as amended by Act No. 103 of the Public Acts of 1985, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418.131, 418.301, 418.354, and 418.401 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 131, 301, 354, and 401 of Act No. 317 of the Public Acts of 1969, section 301 as amended by Act No. 313 of the Public Acts of 1986, section 354 as amended by Act No. 103 of the Public Acts of 1985, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being section 418.131.

(17) THIS SECTION APPLIES ONLY TO PAYMENTS RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR PERSONAL INJURIES OCCURRING ON OR AFTER MARCH 31, 1982. ANY PAYMENTS MADE TO AN EMPLOYEE RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 835 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT HAVE NOT BEEN COORDINATED UNDER THIS SECTION AS OF THE EFFECTIVE DATE OF THIS SUBSECTION SHALL NOT BE COORDINATED, SHALL NOT

BE CONSIDERED TO HAVE CREATED AN OVERPAYMENT OF COMPENSATION BENEFITS, AND SHALL NOT BE SUBJECT TO REIMBURSEMENT TO THE EMPLOYER OR CARRIER.

(18) NOTWITHSTANDING ANY OTHER SECTION OF THIS ACT, ANY PAYMENTS MADE TO AN EMPLOYEE RESULTING FROM LIABILITY PURSUANT TO SECTION 351, 361, OR 385 FOR A PERSONAL INJURY OCCURRING BEFORE MARCH 31, 1982 THAT HAVE BEEN COORDINATED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION SHALL BE CONSIDERED TO BE AN UNDERPAYMENT OF COMPENSATION BENEFITS, AND THE AMOUNTS WITHHELD PURSUANT TO COORDINATION SHALL BE REIMBURSED WITH INTEREST, WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION, TO THE EMPLOYEE BY THE EMPLOYER OR CARRIER.

(19) NOTWITHSTANDING ANY OTHER SECTION OF THIS ACT, ANY EMPLOYEE WHO HAS PAID AN EMPLOYER OR CARRIER MONEY ALLEGED BY THE EMPLOYEE OR CARRIER TO BE OWED THE EMPLOYER OR CARRIER BECAUSE THAT EMPLOYEE'S BENEFITS HAD NOT BEEN COORDINATED UNDER THIS SECTION AND WHOSE DATE OF PERSONAL INJURY WAS BEFORE MARCH 31, 1982 SHALL BE REIMBURSED WITH INTEREST, WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION, THAT MONEY BY THE EMPLOYER OR CARRIER.

Gongwer 5/8/87

GONGWER
NEWS SERVICE, INC.

MICHIGAN REPORT

REPORT NO. 88, VOLUME 14 FRIDAY MAY 8, 1987

EX-JUSTICE SAYS COMP PROVISION ILLEGAL; ENGLER WARNS OF IMPASSE

Opposition to Governor Blanchard's workers' compensation proposal was raised on two fronts Friday as a former Supreme Court justice retained by General Motors asserts a key provision of [it] is unconstitutional and the Senate Republican leader warned of a potential impasse because of the governor's refusal to negotiate. Administration officials defended the bill, which will probably be challenged on two constitutional issues, and urged the Senate to allow a vote on what Mr. Blanchard described as a "balanced, fair package."

The bill would exclude about 9,000 injured workers from a coordination of benefits requirement, more tightly prohibit workers to sue employers injuries unless they are intentionally-caused, and adopt a definition of disability making it harder for injured workers to collect benefits.

The constitutional questions raised earlier by business regarding payment of benefits plus interest to offset over two years of coordinated benefits to workers injured before a 1982 change in the compensation law were reinforced by a legal memo by Theodore Souris, a justice from 1960-68. The memo, dated May 7 and distributed Friday to the governor's staff and legislative leaders, said the provision would violate the constitutional ban against ex poste facto laws.

The provision, which would cost businesses millions of dollars, "clearly violates the rights of employers and (insurance) carriers to due process, and may constitute an impairment of contract rights as well," Mr. Souris said. The payment would create a new liability where none existed before, he said.

The provision is intended to fully reverse a 1985 Supreme Court ruling, which declared employer-paid benefits must be coordinated rather than added together for all employees, not just those injured after the 1982 change as legislative leaders at the time said was intended. No dispute exists on the legality of excluding those workers from coordination as of the date this new proposal is enacted.

Deputy Commerce Director Lou Glazer said the governor is committed to overturning the court ruling as a matter of public policy. "If there is a constitutional question, let the courts rule on it," he said. He said 90 percent of the 1985 decision would be reversed even if the retroactive portion were eventually overturned, but said the package would still be balanced because the governor and Legislature would have done as much as possible to "make those workers whole."

If the Senate does follow the House and approve the bill, business was expected to bring suit regarding the retroactive provision, while labor interests likely would challenge the constitutionality of another provision prohibiting juries to decide whether an employer intentionally injured a worker, thus permitting awards beyond the workers' comp law.

Senate Majority Leader John Engler (R-Mt. Pleasant) said the bill will not be passed as approved by an

84-19 vote by the House. He said the governor's position against further negotiations "has the potential to create a serious impasse. Reaching our mutual goal of a solution isn't helped by last-minute pressure tactics."

In a statement, Mr. Engler criticized the procedure by which the bill reached the Senate, saying, "You can't propose something on Wednesday, pass it on Thursday and expect to intimidate a chamber that has worked on this issue for six months and passed a bipartisan bill six weeks ago." That bill had been criticized as a "business wish list" but covered a wide range of issues, including a tie to a bill making the state Accident Fund a private entity.

Mr. Glazer said, however, the governor "put together a proposal that addresses the key issues that can win widespread support in the Legislature and by business. We would like to vote in the Senate on the merits of the proposal rather than worrying about who is getting credit." He predicted the bill would be passed if it is put up for a vote.

Sen William Faust (D-Westland), who had unsuccessfully tried to substitute his own proposal during Senate debate, said the Blanchard package contains the key elements to put the issue to rest. He and Sen. John Cherry (D-Clio) said they have reservations about elements sought by business, but accept the bill as a comprehenisive plan.

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MICHIGAN REPORT

REPORT NO. 91, VOLUME 26

WEDNESDAY, MAY 13, 1987

WORKERS' COMP UNRESOLVED AS DEADLINE NEARS

The Legislature moved closer to a showdown on the workers' compensation bill with little progress made toward an agreement Wednesday, and the Senate-House conference committee not scheduled to meet until less than eight hours before key provisions expire at midnight Thursday. Blanchard administration officials maintained their non-negotiable position on the bill, infuriating Senate Republicans, who in turn were labelled as obstructionists by House Democrats.

Senate Majority Leader John Engler (R-Mt. Pleasant), who again insisted the sides are not far apart, again won unanimous backing of his caucus as a 20-16 partyline vote rejected the compromise reached on SB 67 by Governor Blanchard and business and labor groups. The House had reasserted its support for that version Tuesday, and leaders said the standard for any changes would have to be measured against what would win business and labor support.

"The governor has been able to gather support or non-opposition of business and labor, and we'll tell the Senate to not waste our time with some media show. If they can come up with a better plan that will have the support of business and labor, we will support

it," Speaker Gary Owen (D-Ypsilanti) said. He said Senate Republicans were being "obstructionist."

All three House conferees—Reps. Juanita Watkins (D-Detroit), Robert Evans (D-Flint) and Gordon Sparks (R-Troy)—said they support the Owen stance that the bill should be passed unless the Senate can come up with something acceptable to business and labor.

Sen. Fred Dillingham (R-Fowlerville), the conference committee chair who called the first meeting for 4:30 p.m. Thursday, said the governor's proposal is inadequate in the areas of retroactive coordination of benefits and suits for intentional injuries, leaving the entire system unsettled for years to come. Other Senate conferees are Dan DeGrow (R-Port Huron) and John Cherry (D-Mt. Morris).

Republicans indicated they now would be willing to concede the language on retroactive benefits—an item that would cost business $60-$80 million—but will insist on tighter language to prohibit injured workers from taking their cases to court rather than just the workers' compensation system.

Mr. DeGrow said he is not convinced business understands the implications of the governor's package, and cannot vote for it in its current form. "If they (business representatives) are not going to object to it, I may have to protect them from themselves," Mr. DeGrow said. "It's not the answer to keeping workers' compensation exclusive."

However, a statement earlier this week by General Motors expressed support for the basic concept of the proposal except for the retroactive benefits.

The exclusive remedy language in the Senate-passed bill was virtually air-tight, barring lawsuits unless an employer intended specifically to injure a named person, and rendering a suit void even if an employee had been injured in that fashion, but filed for workers' comp benefits.

Republicans discussed trading their even tighter exclusive remedy language for a $13 million a year program to increase benefits for some 10,000 workers whose benefits have been eroded by inflation. Earlier proposals provided for the state general fund to make those payments, something the governor has opposed.

Sen. Mitch Irwin (D-Saulte Ste. Marie), in urging the Senate approve the House substitute, said the problem was now one of personalities rather than substance. "The guts of the issue is Jim Blanchard and John Engler. Each one wants to make the other one blink. I wish they both would blink and then we could pass the bill," Mr. Irwin said.

While Mr. Engler may be looking for a way to demonstrate he will not be "bullied," a labor union spokesman said Mr. Blanchard's credibility is also on the line to hold strictly to the proposed agreement. Tim Hughes of the AFL-CIO said that the union's position to neither support nor oppose the Blanchard bill would immediately give way to ardent opposition if agreed to changes along he lines demanded by Mr. Engler.

Mr. Engler said he would not make the debate a personality battle. He said the Senate is pleased with the definitional sections but remain uncertain about the intentional tort and coordination of benefits sections. He said the chambers are very close on the remaining issues and he expected a conference committee could

work out those differences prior to the Thursday midnight expiration date.

A legal memorandum by attorneys retained by the AFL-CIO cited a 1959 Supreme Court ruling in support of the constitutionality of a provision in the agreement requiring companies to make an additional lump sum payment to up to 9,000 workers injured before 1982. The memo by Melvyn Kates and Granner Ries, circulated to legislators Wednesday, was intended to rebut a contention by the General Motors attorney who won a Supreme Court ruling that cut the benefits for those workers that the retroactive provision is an unconstitutional ex poste facto law.

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MICHIGAN REPORT

REPORT NO. 92, VOLUME 26 THURSDAY, MAY 14, 1987

COMP SUNSET AVOIDED AS AGREEMENT REACHED ON BILL

Final agreement was reached late Thursday on a workers' compensation reform bill which officials hope will put the divisive issue to rest for several years to come and boost the state's business climate. With changes in two areas which Republicans said clarify Governor Blanchard's original intent. SB 67 was quickly approved, 35-1 by the Senate and 95-0 by the House.

The governor planned to sign the bill later in the evening before the midnight sunset when the current definition of disability expires. He and legislators congratulated one another for being willing to resolve their differences as they smoothed over Senate Republican Leader John Engler's objection to being presented with a "non-negotiable bill."

The bill tightens the definition under which an injured worker may claim and continue to receive benefits, reverses a court ruling which subjected some injured workers to requirements that injury benefits be set off against pension benefits, and reverses another court ruling to more strictly limit circumstances under which workers injured on the job may sue for additional damages.

"This marks a major achievement in providing our state with a strong and supportive business climate. The workers' compensation reforms that I am signing into law tonight combined with the administrative overhaul of the system enacted two years ago will complete the task of giving Michigan a cost competitive and fair workers' compensation system," Mr. Blanchard said.

The agreement signed by a House Senate conference committee was preceded by a press conference in which the governor stepped slightly back from his line against negotiating changes in the bill: "It's fair to say anything they develop that is fair and balanced and is supported by business and labor, I will support it." With negotiations still underway, Mr. Blanchard also declined to characterize Mr. Engler (R-Mt. Pleasant) as the "logjam" to approving the bill, although he said he did not understand why Republicans did not jump to congratulate him for finally accepting their positions on the issue.

Conference Committee Chair Sen. Fred Dillingham (R-Fowlerville) said the agreement was the result of "everyone's willingness to talk within the parameters the governor laid out." The agreement avoided a tremendous stalemate, he said, adding, "We did one significant thing, and that is reached agreement prior to the sunset."

The changes included: telling the Supreme Court it wrongly decided a 1985 case that cut benefits for up to 9,000 injured workers, which Republicans said would lessen the chances the court would declare unconstitutional the new requirement to retroactively pay those lost benefits; clarifying the exclusive remedy provisions for job-related injuries, permitting law-

suits for additional damages only for an intentional injury, removing language which limited suits "except as otherwise provided by law." However, the revised bill also said the language would not enlarge or reduce rights under the law.

Sen. Dan DeGrow (R-Port Huron) said the delay in adopting the bill—which was twice rejected by the Senate—was "worth it. (The initial language) opened the door to suing under other laws for various injuries." He said the change in the exclusive remedy section returns the law closer to what it was prior to the court ruling than did the original Blanchard language.

Labor Director Betty Howe said the language is only meant to clarify the governor's intent to close the window the court had opened to lawsuits outside the workers' compensation system.

Commerce Director Doug Ross agreed the revision "is perfectly consistent with what business and labor were trying to achieve. There was some feeling there was some ambiguity. Anytime you reduce ambiguity, it is helpful."

Mr. Ross said the bill will give Michigan "a fully competitive workers' compensation system that treats workers fairly." Ms. Howe, who said she accepts business arguments that the tighter definition will cut costs, said the agreement means the state can now concentrate on administratively improving the system and addressing other business issues.

Speaker Gary Owen (D-Ypsilanti) said "this is by far the most comprehensive report we've had. It's what needed to be done to the system." He said it would not make a significant impact in bringing busi-

ness to Michigan, but said there were no "winners or losers."

House Minority Leader Paul Hillegonds (R-Holland) congratulated the governor for being willing to accept some changes while Rep. Robert Emerson (D-Flint), one of the conferees, said the changes were essentially technical in nature.

The Economic Alliance for Michigan applauded the agreement which it said "reasonably would accommodate concerns of employers, employees, and the entire state for equity and competitiveness in the workers' compensation program. Best of all, the bill provides greater stability for the workers' compensation program by eliminating the annual expiration and thus confrontation over the eligibility criteria."